

### **REMARKS/ARGUMENTS**

Reconsideration of this Application in view of the following remarks is respectfully requested.

#### **35 U.S.C. §103 Rejections**

Claims 1, 2, 4, 7-13, 15, 18-25, 27, and 29-34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cottone *et al.* (US 2004/0093058) in view of Ischinger (US 6,146,417). Applicant respectfully traverses the rejection.

Independent claims 1, 13, and 24 recite a weld connecting the at least one flaring member to the tubular body. As admitted by the Examiner, Cottone *et al.* does not disclose or suggest such a structure. Instead, Cottone *et al.* discloses that “the self-expanding region 200 is coupled to the balloon[-]expandable stent region 100 with an encapsulating membrane 300.” (paragraph [0023]). The Examiner relies on Ischinger as disclosing a weld connecting dissimilar materials in a stent. However, Ischinger merely generally provides that the closed loop elements may be “attached to each other by welding, soldering, gluing or similar technique.” Col. 2, lines 27-29. Ischinger separately provides that closed loop elements may be of different materials. Of course, they may be the same materials. Ischinger does not disclose that different materials may be welded together. Instead, Ischinger provides several options for connecting the closed loop elements, whether they be similar or different materials, and separately provides that different materials may be used, without specifying the manner for connecting closed loops of different materials. Accordingly, Ischinger does not teach welding together different materials.

Further, Ischinger certainly does not disclose welding a cobalt-chrome alloy and a nickel-titanium alloy, as recited in independent claims 1, 13, and 24. Instead, the Examiner makes the leap to a third reference (not relied upon in the rejection) as disclosing a cobalt-chrome alloy. The Examiner is merely using hindsight reconstruction to pick and choose isolated portions of the references to come up with the claimed invention. Such a technique is not permissible.

Still further, the Examiner has not provided a reason why one of ordinary skill in the art would have replaced the encapsulating membrane 300 of Cottone *et al.* with a welded connection. The Examiner previously asserted, without support, that the encapsulating membrane 300 of Cottone *et al.* is susceptible to shearing forces, and thus one of ordinary skill in the art would have been motivated to replace the membrane with a weld connection. There is no indication in Cottone *et al.* of such a problem. Further, Cottone *et al.* explains that the membrane is “used to uniformly remodel atherosclerotic plaques and keep this material from

protruding through the stent struts and end region struts and filaments.” (paragraph [0023]). Replacing the membrane of Cottone *et al.* would eliminate a critical feature of the Cottone *et al.* publication, one that is recited in each of its claims.

For the reasons set forth above, Cottone *et al.* and Ischinger, alone or combination, do not disclose or render obvious the features recited in independent claims 1, 13, and 24 of the present application. Claims 2, 4, 7-12, 15, 18-23, 25, 27, and 29-34 depend from and add features to independent claim 1, 13, or 24, and are therefore allowable over Cottone *et al.* and Ischinger for at least the same reasons as claims 1, 13, and 24. Applicant therefore respectfully requests that the rejection be withdrawn.

Claims 1, 2, 4, 7-13, 15, 18-25, 27, and 29-34 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over Vardi *et al.* (US 2002/0156516) in view of Cottone *et al.* and Ischinger. Applicant respectfully traverses the rejection

The Examiner asserts that Vardi *et al.* is being used as the primary reference instead of Cottone *et al.* to overcome the above argument that one of ordinary skill in the art would not have replaced the membrane of Cottone *et al.* with a weld. However, the rejection still relies on the Cottone *et al.* publication as the primary reference and relies on the Vardi *et al.* patent for apparently teaching a direct connection between the tubular portion and the flaring portion of the stent.

In particular, independent claim 1, 13, and 24 each recite that the tubular body is constructed from a cobalt-chrome alloy and the flaring member is constructed from a nickel-titanium alloy. The Vardi *et al.* publication makes no mention of the specific materials used for the flared stent (15), or that the flaring portion (18) is made of a different material than the tubular portion thereof. If, as the Examiner asserts, Vardi *et al.* is being used as the primary reference, then a reason for modifying Vardi *et al.* to construct the flaring portion (18) of flared stent (15) of a nickel-titanium alloy and the tubular portion of a cobalt-chrome alloy needs to be provided. The Examiner failed to do so. Accordingly, a *prima facie* obviousness rejection has not been made.

Further, independent claims 1, 13, and 24 each recite a weld connecting the flaring member to the tubular member. Vardi *et al.* does not disclose such a structure. Vardi *et al.* merely discloses “a flared stent comprising a compressible flared portion at its proximal end,

which flared portion may comprise hooks, compressible mesh or any other means of creating such a flared portion at the proximal end of the stent.” Page 2, paragraph [0013]. Vardi *et al.* does not disclose whether the flared portion is formed as part of the flared stent or separate from the flared stent and attached to it. The Examiner merely asserts that FIG. 6g shows a flared stent attached directly to its body. The Examiner then asserts that “it would have been obvious to one of ordinary skill in the art to modify Vardi’s stent to include Cottone’s general shape...” The Examiner does not explain why one of ordinary skill in the art would have made such an alteration to the Vardi *et al.* stent. Further, even if one of ordinary skill in the art would have modified the Vardi *et al.* stent because Vardi *et al.* explains that “any means of creating such a flared portion” can be used, such a person of ordinary skill would have modified the Vardi *et al.* stent as taught by Cottone *et al.*, that is, by attaching such a flared portion to the tubular body using a membrane.

Independent claim 1 and dependent claims 19 and 30, also recite that the flaring member includes a short segment and a long segment, wherein both the short segment and the long segment are parallel to the longitudinal axis of the tubular body in an unexpanded configuration and the short segment remains generally parallel to the longitudinal axis in an expanded configuration, and the long segment becomes generally perpendicular to the longitudinal axis in the expanded configuration. The Examiner does not explain why one of ordinary skill in the art would modify the Vardi *et al.* stent to include such a feature. The Examiner merely asserts that one of ordinary skill in the art could use the flaring portion of Cottone *et al.*, without providing a reason why one of ordinary skill in the art would have done so. The Examiner then asserts that rather than using the very attaching means described in Cottone *et al.*, such a person of ordinary skill would jump to a third reference, Ischinger, to weld the flaring portion to the tubular portion. The Examiner, however, does not provide a reason why one of ordinary skill in the art would do so. Accordingly, a *prima facie* obviousness rejection has not been made.

For the reasons set forth above, Vardi *et al.*, Cottone *et al.* and Ischinger, alone or combination, do not disclose or render obvious the features recited in independent claims 1, 13, and 24 of the present application. Claims 2, 4, 7-12, 15, 18-23, 25, 27, and 29-34 depend from and add features to independent claim 1, 13, or 24, and are therefore allowable over Vardi *et al.*, Cottone *et al.* and Ischinger for at least the same reasons as claims 1, 13, and 24. Applicant therefore respectfully requests that the rejection be withdrawn.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-0221.

Respectfully submitted,

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